
OLR Bill Analysis

sHB 6487

AN ACT CONCERNING CERTIFICATES OF MERIT.

SUMMARY:

By law, an attorney or claimant cannot file a medical malpractice lawsuit or apportionment complaint (see BACKGROUND) unless he or she has made a reasonable inquiry under the circumstances to determine that grounds exist for a good faith belief that the claimant received negligent medical care or treatment. The complaint or initial pleading must contain a certificate to this effect. To show such good faith, the claimant or attorney must obtain a written, signed opinion from a “similar health care provider” that there appears to be evidence of medical negligence.

This bill modifies these requirements in several respects. Specifically, it:

1. broadens the definition of “similar health care provider” for purposes of identifying those qualified to submit an opinion letter;
2. eliminates the requirement that the opinion letter include a detailed basis for the formation of the opinion, instead requiring that it state one or more specific breaches of the prevailing professional standard of care;
3. only allows dismissal due to failure to obtain and file the opinion letter if the claimant does not remedy the failure within 60 days of the court’s order to do so;
4. explicitly provides that the opinion letter is not required in actions against health care providers for assault, lack of informed consent, or ordinary negligence unrelated to the rendering of care or treatment;

5. requires any consideration of the opinion letter to be based on the copy of the letter attached to the certificate; and
6. specifies that the opinion letter is not to be used to limit allegations in the complaint against any defendant or to limit expert witness testimony.

EFFECTIVE DATE: Upon passage

SIMILAR HEALTH CARE PROVIDER

By law, a similar health care provider for purposes of submitting an opinion letter must be:

1. if the defendant is a specialist or holds himself or herself out as a specialist, a provider (a) trained and experienced in the same specialty as the defendant and (b) certified by the appropriate American board in that specialty, provided that if the defendant is providing treatment or diagnosis for a condition not within his or her specialty, a specialist trained in that condition is also considered a similar health care provider; or
2. if the defendant is not board certified, trained, or experienced as a specialist, or does not hold himself or herself out as a specialist, a provider (a) licensed by the appropriate Connecticut agency or another state requiring the same or greater qualifications and (b) trained and experienced in the same discipline or school of practice as the defendant as a result of active involvement in practice or teaching within the five years before the incident giving rise to the claim.

The bill broadens the definition of “similar health care provider” for purposes of the opinion letter to also include:

1. a provider who, to the court’s satisfaction, has sufficient training, experience, and knowledge due to active involvement in practice or teaching in a related field within the five years before the incident giving rise to the claim, to be able to provide expert testimony as to the prevailing professional standard of care in a

given medical field and

2. a provider qualified to testify on the prevailing professional standard of care with respect to any corporate or business defendant, including hospitals, nursing homes, health care centers (HMOs), or other corporations or businesses employing health care providers from different practice specialties.

The bill also classifies providers in category 1 above as “similar health care providers” for purposes of establishing the prevailing professional standard of care in medical malpractice actions. Current law does not classify such providers as similar health care providers but allows them to testify as expert witnesses.

BACKGROUND

Apportionment Complaints

The requirement for a good faith certificate and opinion letter applies as well to apportionment complaints against another health care provider. An apportionment complaint is a defendant’s claim in a medical malpractice lawsuit that another health care provider, who the plaintiff did not make a defendant, committed malpractice and partially or totally caused the plaintiff’s damages.

Bennett v. New Milford Hospital

In *Bennett v. New Milford Hospital, Inc.*, 300 Conn. 1 (2011), the defendant filed a motion to dismiss the medical malpractice action because the author of the plaintiff’s opinion letter was not a “similar health care provider.” The defendant specialized in emergency medicine, but the opinion letter’s author described himself as “a practicing and board certified general surgeon with added qualifications in surgical critical care, and engaged in the practice of trauma surgery.”

The court ruled that the author of an opinion letter must be a similar health care provider. The court found the statute requiring the opinion letter to be ambiguous when read in isolation. However, when read in conjunction with related statutes and legislative history, the court

concluded that the author of an opinion letter must be a similar health care provider, regardless of his or her potential qualifications to testify at trial under another statutory provision.

The court also ruled that the law required a case to be dismissed when a plaintiff fails to file an opinion letter written by a similar health care provider. They found this statutory text also to be ambiguous, but when read in conjunction with legislative history and other cases, the court concluded that dismissal was mandatory. The court acknowledged the severity of this remedy, but emphasized that plaintiffs could re-file their case.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 30 Nay 11 (03/30/2011)